UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

LAKEGIRL, INC., Plaintiff, v. LIVNFRESH, INC., Defendant.	Case No. 17-cv-_____ **COMPLAINT** JURY TRIAL REQUESTED

For its Complaint, Plaintiff Lakegirl, Inc. (hereafter "Lakegirl" or "Plaintiff") states and alleges as follows:

THE PARTIES

1. Plaintiff Lakegirl has established itself as the preeminent source of clothing, products, and accessories under the LAKEGIRL brand. Lakegirl is a corporation duly organized and existing under the laws of Minnesota with its principal place of business at 24398 N. Melissa Dr., Detroit Lakes, Minnesota 56501.

2. On information and belief, Defendant Livnfresh, Inc., ("Livnfresh" or "Defendant") is a Michigan corporation located at 765 Expressway Ct, Gaylord, Michigan 49735.

JURISDICTION AND VENUE

3. This is an action for trademark infringement arising under the trademark laws of the United States. Jurisdiction of this Court is appropriate because this Court has subject-matter jurisdiction pursuant to the provisions of 28 U.S.C. §§ 1331 and 1338(a), and 15 U.S.C. § 1121.

4. Jurisdiction and venue are proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) because Defendant has committed acts of infringement in this judicial district and a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

GENERAL ALLEGATIONS

Plaintiff Lakegirl

5. Since at least 2003 and long prior to the acts of Defendant complained of herein, Plaintiff Lakegirl has been in the business of developing, manufacturing and marketing various clothing and other products using the trademark LAKEGIRL® throughout the United States.

6. Plaintiff is a family owned business which began designing its own LAKEGIRL® brand clothing over 13 years ago and has gradually expanded its business and line of products.

7. Lakegirl owns incontestable U.S. Trademark Registration No. 3062427 (TESS copy attached as **Exhibit 1** and hereafter "the '427 Registration"), issued on February 28, 2006, with a first use date of at least as early as May 30, 2004, for LAKEGIRL in Class 25 for "Sweatshirts and t-shirts."

8. Lakegirl owns U.S. Trademark Registration No. 4364750 (TESS copy attached as **Exhibit 2** and hereafter "the '750 Registration"), issued on July 9, 2013, with a first use date of at least as early as May 30, 2004, for LAKEGIRL, in Class 25 for "Caps; Hats; Headwear; Jackets; One-piece garments for children; Pants; Shirts."

9. Lakegirl owns incontestable U.S. Trademark Registration No. 3547503 (TESS copy attached as **Exhibit 3** and hereafter "the '503 Registration"), issued on December 16, 2008, with a first use date of at least as early as January 8, 2008, for LAKEGIRL in Class 18 for "handbags."

10. Plaintiff is the owner of a number of other federal trademark registrations of the LAKEGIRL® mark for additional goods and services, including U.S. Registration Nos. 3411417, 3494644, 3699375, 3941889, 3941890, 4539913, 4548808, and 5,151,224.

11. As owner of these U.S. Trademark Registrations, Lakegirl is entitled to the exclusive right to use the LAKEGIRL Mark nationwide on or in connection with the goods and services listed in its registrations (the "Lakegirl Products").

12. The U.S. federal trademark registrations provide constructive notice of Lakegirl's rights in the LAKEGIRL Mark.

13. Lakegirl sells products utilizing the LAKEGIRL Mark nationwide and through regional retail stores and catalogs. Examples of such retailers include Amazon, Signals, CatalogClassics, and regional retail stores throughout the country. Lakegirl also sells products utilizing the LAKEGIRL Mark through retail stores including stores located in Minnesota.

14. Lakegirl has expended a great deal of time and financial resources to build customer recognition and goodwill related to the LAKEGIRL brand in the United States. As a result, consumers in the clothing and accessories industry recognize the LAKEGIRL Mark as a source identifier for Lakegirl Products and as a symbol of Lakegirl's goodwill and high quality standards.

15. Lakegirl has vigilantly policed and enforced its exclusive rights in the LAKEGIRL Mark to prevent unauthorized use of the LAKEGIRL Mark by competitors.

16. Based upon its use of the LAKEGIRL Mark for over 13 years, Lakegirl's rights in the LAKEGIRL Mark predate and are superior to any rights Livnfresh may claim in the LAKEGIRL mark and/or and similar variations.

Defendant Livnfresh

17. Without authorization, Defendant is using the mark LAKE GIRL in conjunction with similar or related products to Lakegirl's Products.

18. Specifically, Livnfresh sells t-shirts, sweatshirts, hoodies, other clothing items, handbags and totes that prominently display the mark LAKE GIRL ("Defendant's Products"). Examples of two of Livnfresh's infringing products are shown here:

I'M A
LAKE
GIRL

I'M A
LAKE
GIRL

19. Defendant's Products compete directly with Lakegirl's Products.

20. Defendant's website is accessible through the domain, www.livnfresh.com. A copy of some of the additional infringing items appearing on Defendant's website is attached as **Exhibit 4**.

21. Defendant sells its LAKE GIRL products to consumers throughout the United States, including Minnesota, through its website and through other online retail websites.

22. Like Lakegirl, upon information and belief Defendant also sells its products through Amazon.com.

Attempts at Resolution

23. On April 8, 2016, counsel for Lakegirl sent a letter to Defendant requesting that Defendant cease use of the LAKEGIRL Mark.

24. On April 21, 2016, counsel for Livnfresh responded and indicated that Livnfresh refused to cease use of the LAKEGIRL Mark.

25. On May 16, 2016, counsel for Lakegirl reached out to Defendant's counsel, and informed counsel that Livnfresh's continued use was unacceptable and reiterated its request that Defendant cease use of the LAKEGIRL Mark.

26. On June 20, 2016, Livnfresh filed U.S. Trademark Application Serial No. 87076983 for GREAT LAKES GIRL in connection with "Hoodies; Long-sleeved shirts; Shirts; Sweat shirts; Tank tops; Bandanas; Hats; Pants; Underwear." The application was signed by Cari Samalik, identified as the "Owner" of Livnfresh, Inc.

27. On July 1, 2016, Livnfresh filed U.S. Trademark Application Serial No. 87091554 for I'M A LAKE GIRL in connection with "Bandanas; Hats; Pants; Shirts; Underwear; Short-sleeved or long-sleeved t-shirts; Short-sleeved shirts." The application was signed by Cari Samalik, identified as the "Owner" of Livnfresh, Inc.

28. In August 2016, counsel for Lakegirl again contacted Defendant's counsel and reiterated the demand that Defendant cease use of the LAKEGIRL Mark. Counsel spoke telephonically, and by electronic mail.

29. On September 1, 2016, counsel for Livnfresh again stated that Livnfresh refused to cease use of the LAKEGIRL Mark.

30. On September 12, 2016, Livnfresh expressly abandoned the applications for GREAT LAKES GIRL and I'M A LAKE GIRL (the "Livnfresh Applications"). The Livnfresh

Applications were filed with knowledge of Plaintiff's registrations. Upon information and belief, the Livnfresh Applications were withdrawn by Defendant because Defendant knew, believed and/or was advised that the applications for the marks GREAT LAKES GIRL and I'M A LAKE GIRL would be rejected by the USPTO because of a likelihood of confusion with Plaintiff's LAKEGIRL Mark and registrations.

31. Defendant's products bearing the marks GREAT LAKES GIRL and I'M A LAKE GIRL bear a "TM" symbol.

32. Despite Plaintiff Lakegirl's federal registrations and Plaintiff's efforts and communications, Defendant continues to use the LAKE GIRL mark in violation of Lakegirl's rights in the LAKEGIRL Mark.

COUNT I
INFRINGEMENT OF U.S. TRADEMARK REGISTRATION NO. 3,062,427

33. Lakegirl repeats and realleges paragraphs 1 through 32 as though fully set forth herein.

34. Defendant uses, in commerce and without authorization, Lakegirl's LAKEGIRL Mark with competitive, identical, or closely related products to those sold by Lakegirl under its LAKEGIRL Mark.

35. Defendant's use of Lakegirl's LAKEGIRL Mark is likely to cause confusion, to cause mistake, or to deceive consumers as to the affiliation, connection, or association of Defendant with Lakegirl. The consuming public is likely to believe that Defendant's products originate with Lakegirl, are licensed, sponsored or approved by Lakegirl, or in some way connected with or related to Lakegirl.

36. The acts of Defendants complained of herein constitute infringement of Lakegirl's U.S. Trademark Registration No. 3,062,427 of the LAKEGIRL® mark in violation of 15 U.S.C. § 1114.

37. Defendant was on constructive notice of Lakegirl's LAKEGIRL Mark by virtue of Lakegirl's federal trademark registrations.

38. In addition, Defendant had actual notice of Lakegirl's LAKEGIRL Mark at least as early as April 2016, when Lakegirl contacted Defendant and requested that Defendant cease use of Lakegirl's LAKEGIRL Mark.

39. Lakegirl has no control over the nature and quality of the products sold or advertised by Defendant. Any failure, neglect, or deficiencies by the Defendant in providing such products will reflect adversely on Lakegirl as the believed source or origin thereof, thereby hampering efforts by Lakegirl to continue to protect its outstanding reputation for high quality products, resulting in the loss of sales, all to the irreparable injury of Lakegirl. Defendant's activities will continue to cause irreparable injury and damage unless restrained by this Court.

40. Lakegirl has no adequate remedy at law for Defendant's violations of 15 U.S.C. § 1114.

41. Defendant's activities and conduct have harmed and continue to harm Lakegirl. Accordingly, Lakegirl is entitled to recover its damages, Defendant's profits received as a result of those activities and conduct, and the costs of bringing this action pursuant to 15 U.S.C. § 1117(a).

42. In addition, Defendant's activities have been willful and malicious and accordingly Lakegirl is entitled to treble damages and reasonable attorney's fees pursuant to 15 U.S.C. § 1117(a). The goodwill and reputation of Lakegirl's business in connection with its

trademarks are of significant value, and Lakegirl will suffer irreparable injury should this Court allow Defendant's use to continue to the detriment of Lakegirl's trade reputation and good will. Because this irreparable injury cannot be adequately calculated or compensated solely by money damages, Plaintiff seeks preliminary and permanent injunctive relief pursuant to 15 U.S.C. § 1116.

COUNT II
INFRINGEMENT OF U.S. TRADEMARK REGISTRATION NO. 4,364,750

43. Lakegirl repeats and realleges paragraphs 1 through 42 as though fully set forth herein.

44. The acts of Defendant complained of herein constitute infringement of Lakegirl's U.S. Trademark Registration No. 4,364,750 of the LAKEGIRL® mark in violation of 15 U.S.C. § 1114.

45. As a direct and proximate result of the likely confusion, mistake or deception by Defendants, Lakegirl has suffered and will continue to suffer irreparable harm if Defendants' use of the LAKEGIRL® mark is not enjoined.

46. Pursuant to 15 U.S.C. § 1117, Lakegirl is entitled to recover all of Defendants' profits from their infringement of the LAKEGIRL® mark as well as the costs of this action. The intentional nature of this trademark infringement renders this an exceptional case entitling Lakegirl to an award of attorneys' fees under 15 U.S.C. § 1117.

COUNT III
INFRINGEMENT OF U.S. TRADEMARK REGISTRATION NO. 3,547,503

47. Lakegirl repeats and realleges paragraphs 1 through 46 as though fully set forth herein.

48. The acts of Defendant complained of herein constitute infringement of Lakegirl's U.S. Trademark Registration No. 3,547,503 of the LAKEGIRL® mark in violation of 15 U.S.C. § 1114.

49. As a direct and proximate result of the likely confusion, mistake or deception by Defendants, Lakegirl has suffered and will continue to suffer irreparable harm if Defendants' use of the LAKEGIRL® mark is not enjoined.

50. Pursuant to 15 U.S.C. § 1117, Lakegirl is entitled to recover all of Defendants' profits from their infringement of the LAKEGIRL® mark as well as the costs of this action. The intentional nature of this trademark infringement renders this an exceptional case entitling Lakegirl to an award of attorneys' fees under 15 U.S.C. § 1117.

COUNT IV
VIOLATION OF THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT

51. Lakegirl repeats and realleges paragraphs 1 through 50 as though fully set forth herein.

52. The Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, provides as follows:

> Subdivision 1. **Acts constituting.** A person engages in a deceptive trade practice when, in the course of business, vocation, or occupation, the person:
>
> (1) passes off goods or services as those of another;
>
> (2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;
>
> (3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;
>
> * * *
>
> (5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;
>
> * * *

> (7) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;
>
> * * *
>
> (13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

53. Defendants' conduct constitutes violations of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, subd. 1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lakegirl, Inc. prays for the following relief:

1. A judgment that Defendant has infringed Lakegirl, Inc.'s U.S. Trademark Registration No. 3,062,427;

2. A judgment that Defendants have infringed Lakegirl, Inc.'s U.S. Trademark Registration No. 4,364,750;

3. A judgment that Defendant has infringed Lakegirl, Inc.'s U.S. Trademark Registration No. 3,547,503;

4. A judgment that Defendant has violated the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44, subd. 1;

5. A preliminary and permanent injunction prohibiting Defendant, its subsidiaries, affiliates, parents, successors, assigns, officers, agents, servants, employees, attorneys, and all persons acting in concert or in participation with it, or any of them, from infringing United States Trademark Registration Nos. 3,062,427, 4,364,750 and 3,547,503, through further manufacture, use, offers for sale and sale of infringing products, including but not limited to those shown above and in **Exhibit 4** hereto;

6. An order directing that Defendant deliver to Lakegirl, Inc.'s attorneys or representatives for destruction all infringing products, patterns and means for making the same;

7. An order that Defendant be required to account for all gains, profits, advantages, and unjust enrichment derived from their violations of law;

8. An order requiring Defendant to pay Lakegirl, Inc. any and all monetary damages to which Lakegirl, Inc. is entitled and trebling damages for willful infringement and/or use of counterfeit marks under 15 U.S.C. § 1117(a) and (b), plus interest on all amounts;

9. Alternatively, an order requiring Defendant to pay Lakegirl, Inc. statutory damages for use of counterfeit marks as provided in 15 U.S.C. § 1117(c);

10. An order requiring Defendant to pay Lakegirl, Inc. all costs, disbursements, and attorneys' fees incurred by Lakegirl, Inc. in this action; and

11. Such other, further and additional relief as this Court may deem proper and just.

JURY DEMAND

Lakegirl, Inc. demands that the above entitled matter and all issues so triable be tried before and decided by a jury.

Dated: May 9, 2017

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